

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3343

IN THE MATTER OF:

Served May 31, 1989

Application of PETER PAN BUS LINES,)   
INC., for a Certificate of Public )   
Convenience and Necessity --- )   
Charter Operations )

Case No. AP-88-36

By Order No. 3311, served April 4, 1989, the Commission denied the above-captioned application. On May 2, 1989, Peter Pan Bus Lines, Inc. (Peter Pan or petitioner), timely filed a petition for reconsideration of Order No. 3311. By joint reply filed May 9, 1989, protestants Blue Lines, Inc.; Gold Line, Inc.; National Coach Works, Inc.; The Airport Connection, Inc.; and Webb Tours, Inc., oppose Peter Pan's petition for reconsideration.

The "petition argues that the Commission erroneously misinterpreted the evidence and misapplied the applicable law in denying the application." 1/ The petition asserted four specified errors, which will be addressed seriatim.

**Petitioner's error specification #1:** "The Commission erred in finding that Peter Pan's sophisticated and extensive marketing program steals business from existing carriers rather than creates an additional need for service." 2/

Petitioner accurately quotes the following exchange on direct examination between petitioner's counsel and petitioner's operating witness:

- Q. In your own personal opinion from your activities do you believe that your advertising steals passengers from other carriers or does it promote new business?
- A. I guess my honest answer is it possibly does both but certainly I think that we are promoting a new market as a result of advertising our product more aggressively. If you understand that there is about 1 percent of transportation in the country is performed by intercity bus,

---

1/ Petition, p. 3.

2/ Petition, p. 3.

it's a huge market out there who are primarily going by automobile that can be induced to take a bus and marketing is the way to do that. 3/

The language from Order No. 3311 is as follows:

Mr. Picknelly believes the company's emphasis on marketing "steals" business from other carriers while actually creating an expanded market by inducing persons who would have otherwise traveled by automobiles to use a bus. 4/

We find here no misrepresentation or misinterpretation of the testimony. Moreover, it must be noted that this sentence occurs in Order No. 3311 not as a finding but under the heading "SUMMARY OF EVIDENCE." 5/

**Petitioner's error specification #2:** "The Commission erred in concluding that 'much' of Peter Pan's proposed charter service would be for sightseeing tours." 6/

The language from Order No. 3311 is as follows:

We cannot on this record find that the public convenience and necessity require Peter Pan's proposed charter service, much of which would be for sightseeing tours. 7/

Peter Pan's application seeks authority for charter sightseeing, and its proposed tariff provides both for the vehicle driver to serve as a sightseeing lecturer and for securing the services of a separate lecturer. Peter Pan's operating witness described in detail the company's sightseeing tours:

We operate an extensive motor coach tour service. We are the largest motor coach tour operator in New England. We operate over a thousand tours annually that originate at various points in New England destined to all points in the United States, most of which are east of the Mississippi. 8/

---

3/ Transcript, p. 47.

4/ Order No. 3311, pp. 3 - 4.

5/ Order No. 3311, p. 1.

6/ Petition, p. 3.

7/ Order No. 3311, p. 10.

8/ Transcript, p. 17.

We have a sister corporation called Peter Pan World Travel and we have Peter Pan Tours. Peter Pan World Travel, Inc. operates Peter Pan Tours which is the tour portion of our business and the sales organization for the most part of our business. And the operation employs about a hundred people and has revenues of about \$6 million in 1988. (Emphasis supplied.) 9/

Oddly, in view of such testimony, the petition argues:

One glaring example [of the Commission's misinterpretation] is the Commission's finding at page 10 of its Order that "much" of Peter Pan's proposed service "would be for sightseeing tours." To render such a finding, one can only conclude that the Commission looked at the many exhibits presented, many of which related to sightseeing type charter trips, and ignored the testimony. 10/

We have ignored neither the testimony nor the exhibits. As charter sightseeing tours are an integral part of both (1) the application under consideration and (2) petitioner's existing operations, petitioner can only fault the quantification "much," which is imprecise to begin with, and which is certainly warranted by the record. A lesser finding, such as "some," would not have affected our decision.

**Petitioner's error specification #3:** "The Commission created an error of law by (a) completely ignoring in its decision applicant's argument that evidence before the Commission other than that submitted by public witnesses in this proceeding established public convenience and necessity, and (b) by failing to take official notice of evidence before the Commission in other proceedings establishing a public need for the service proposed by Peter Pan." 11/

**Petitioner's error specification #4:** "The Commission erred in equating the requirement of the Compact requiring a finding of public convenience and necessity with a requirement that an applicant in a particular case can only make such a showing by sponsoring testimony by members of the public, rather than through other, appropriate evidence." 12/

The two final specifications of error above are related, and we shall address them together. Petitioner's reliance upon evidence in Case No. MP-88-37 13/ is misplaced. Case No. MP-88-37 was entitled

---

9/ Transcript, p. 17.

10/ Petition, pp. 6 - 7.

11/ Petition, p. 4.

12/ Petition, p. 4.

13/ Petition, p. 7.

Investigation of Need for Charter Coach Service Pursuant to the Compact, Title II, Article XII, Section 4(d)(3), which, petitioner says, "addressed the public convenience and necessity issue." 14/ Petitioner also states that, "Commission Order Nos. 3239 and 3263 [issued in Case No. MP-88-37] address specifically the issue of additional need for charter service in the Washington Metropolitan District in light of the public convenience and necessity standard." 15/

In fact, public convenience and necessity is not an issue under Section 4(d)(3), whereas it is an issue under Section 4(b), which controls this application as petitioner has specifically recognized in this petition. 16/ It is Section 4(b) under which Peter Pan's application must be considered. Case No. MP-88-37 dealt exclusively with separate and different standards, and considered only the need for 180 days temporary authority, not the issuance of a certificate of public convenience and necessity. Furthermore, the need for additional service within that limited time was addressed in Case No. MP-88-37 by the issuance of temporary authority to a number of carriers specifically to meet the need found therein. Peter Pan wrote a letter to the Commission specifically declining to participate in Case No. MP-88-37. 17/

Accordingly, petitioner's argument that the Commission ignored Peter Pan's position or failed to recognize its own findings with regard to public convenience and necessity in Case No. MP-88-37 can be of no avail. The argument is flawed by petitioner's failure to recognize that public convenience and necessity is not an issue under Section 4(d)(3). We do agree with petitioner that it would have been better in Order No. 3311 to have pointed this out as we have done here. However, the evidence in Case No. MP-88-37 does not address the issue of public convenience and necessity and is of no aid to petitioner in this case under Section 4(b).

Petitioner's vague reliance on "other, appropriate evidence" (error specification #4) beyond Case No. MP-88-37, is supported only by argument alluding to testimony presented by Peter Pan's own operating witness, its chairman, concerning Peter Pan's advertising program. On the issue of public convenience and necessity, testimony of an applicant's own company witness can be expected to be somewhat self-serving, and is not considered sufficient to carry this issue. No additional corroborative or independent evidence was presented concerning the notion that Peter Pan's advertising program could or would create a sufficient need for its service to warrant a finding of public convenience and necessity.

---

14/ Petition, pp. 7 - 8.

15/ Petition, p. 9.

16/ Petition, p. 2.

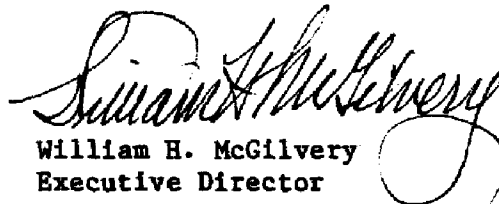
17/ Letter of October 11, 1989.

We considered the record that was properly before us and relevant in this case. It did not and does not support a finding that the public convenience and necessity require the service proposed by Peter Pan.

In Order No. 3311 we found Peter Pan fit, denied the application without prejudice, and provided that any petition for reconsideration timely filed by Peter Pan and based on a proffer of additional evidence would be treated as a petition to reopen the case for the limited purpose of considering whether the public convenience and necessity require the proposed services. This petition contains no such proffer, and we must conclude that Peter Pan is unable or unwilling to address the sole remaining deficiency of evidence concerning public convenience and necessity that caused us to take the extraordinary step of not only leaving the door open but issuing an invitation to come through.

THEREFORE, IT IS ORDERED that the Petition for Reconsideration filed by Peter Pan Bus Lines, Inc., is hereby denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director